

HOUSE BILL 3273  
By Kernell

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 36,  
relative to horse racing.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 36, is amended by deleting  
Parts 1 and 2 of such chapter and by substituting instead the following.

SECTION 2. This chapter shall be known and may be cited as the "Racing Control Act  
of 1998".

SECTION 3. By its grant of "plenary power," the general assembly has imbued the  
commission with complete and unqualified power over horse racing, subject only to  
constitutional limits.

SECTION 4. As used in this chapter, unless the context otherwise requires:

(1) "Association" means, as the context requires, any person applying to the West  
Tennessee state racing commission for a license to conduct a race meeting or any person  
licensed by the commission to engage in the conduct of a race meeting.

(2) "Breakage" means the odd cents by which the amount payable on each dollar  
wagered exceeds a multiple of ten cents (10¢);

(3) "Commission" means the West Tennessee state racing commission created by  
Section 8 of this act;

(4) "Horse" means any type of horse, including, but not limited to, Appaloosa, Arabian,  
Standardbred, Quarter Horse or Thoroughbred;

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(5) "Municipality" means any incorporated municipality having a population greater than one hundred thousand (100,000) according to the 1980 federal census or any subsequent federal census;

(6) "Public employee" means any individual who receives compensation from the state or any political subdivision thereof or any public governmental authority or corporation established for the performance of public functions;

(7) "Public official" means an elected or appointed person in the executive, legislative or judicial branch of the state or any political subdivision thereof;

(8) "Race meeting" means the whole period of time, whether consecutive dates or otherwise, for which an association has been granted a license by the commission;

(9) "Host facility" means the racetrack at which the race is run or the facility which is designated as the host facility if the race is run in a jurisdiction which is not participating in the interstate combined wagering pool;

(10) "Host jurisdiction" means the jurisdiction in which the host facility is located;

(11) "Interstate combined wagering pool" means a pari-mutuel pool established in one jurisdiction which is combined with comparable pari-mutuel pools from one (1) or more other jurisdictions for the purpose of establishing payoff prices in the various participating jurisdictions;

(12) "Jurisdiction" means that governmental entity which regulates pari-mutuel wagering at the national, state, or local level in the United States, its territories or possessions, or in any other country;

(13) "Live race" means a horse race which is actually run on an association's track;

(14) "Person" means any individual, association, partnership, joint venture, corporation, governmental entity or instrumentality thereof, or any other organization or entity;

(15) "Simulcast race" means, according to the context, either the broadcast from an association of a live race, simultaneously with its running, or the receipt by an association of a broadcast of a race conducted at a track in the United States, simultaneously with its running;

(16) "Take-out" means that portion of a wager which is deducted from or not included in the pari-mutuel pool, and which is distributed to persons other than those placing wagers;

(17) "Dark day" means a day on which the association does not conduct live racing on its track surface;

(18) "Enclosure" means the real property and appurtenances and improvements thereto which is contiguous or adjacent to the association's racing surface and is owned, leased or otherwise possessed by the association for purposes related to its conduct of pari-mutuel wagering;

(19) "Fair" means a county, district or division fair as defined in § 43-21-104, which qualifies for state aid grants under § 43-21-102;

(20) "Premises" means any real property and the appurtenances and improvements thereto which is owned, leased or otherwise possessed by the association for purposes related to its conduct of pari-mutuel wagering; and

(21) "Satellite teletheater" or "satellite simulcast teletheater" means a facility, operated by an association which has been granted a race meeting license, at a location separate from the enclosure for the purpose of displaying and accepting wagers on simulcast races. A satellite teletheater shall have amenities similar in quality to the association's grandstand and clubhouse facilities.

SECTION 5. (a) It is the intention of this chapter that all costs incurred by the state in implementing and administering this chapter be paid out of the revenue received from the taxes imposed in this chapter.

(b) The commissioner of finance and administration shall identify all costs incurred by the state to implement and administer this chapter.

(c) All moneys to be received into the special agency account known as the "racing development fund" shall be used first to defray costs incurred by the state.

SECTION 6. (a) There is hereby established within the general fund a special agency account to be known as the "racing development fund," hereinafter referred to as the "fund." The fund shall be composed of breakage proceeds received by the state under § 4-36-306(e) of this act, the uncashed ticket proceeds received by the state under § 4-36-306(f) registration fees collected by the commission under § 4-36-304, and the fund allocation established in § 4-36-306(a).

(b) Any unencumbered funds and any unexpended balance of this fund remaining at the end of the fiscal year shall not revert to the general fund, but shall be carried forward until expended in accordance with the provisions of this chapter.

(c) Interest accruing on investments and deposits of the fund shall be returned to the fund and remain a part of the fund.

(d) The fund shall be managed on a revolving no-quarter basis.

(e) An advisory committee composed of one (1) breeder, one (1) member of the commission, and one (1) member who shall be a representative of a licensed association shall be selected by the full commission for terms established by the commission and shall offer recommendations to the commission concerning the administration of the fund for supplemental programs and purses.

(f) After defraying the state costs in implementing and administering this chapter, as provided in Section 5 of this act, the commission shall use the fund to promote, enhance, improve and encourage the development of the breeding industry in Tennessee by providing supplemental programs and purses for designated stakes, handicap, allowance and non-claiming maiden races at licensed race meetings in Tennessee. The awarding and payment of a supplemental purse shall be conditioned on the winning, placing or showing in such races by Tennessee bred horses. Any supplemental purse provided for a designated race shall be apportioned among the winning, placing and showing horses in the same proportion as the stake or purse is provided for the race by the association.

(g) The commission shall control expenditures made from the fund. The commission shall consult with various breeders' associations in allocating the proceeds from the fund. The commission shall promulgate rules and regulations to effectuate the provisions of this subsection and shall administer the program in a manner best designed to promote and aid the development of the horse breeding industry in Tennessee, to upgrade the quality of racing in

SECTION 7. Tennessee Code Annotated, Title 4, Chapter 36, is amended by adding Sections 8 through 24 as new Part 2.

SECTION 8. (a) There is created a West Tennessee state racing commission, hereinafter referred to as the "commission," which shall consist of nine (9) members.

(b) (1) Seven (7) members shall be appointed by the governor with the consent of the general assembly as expressed by a joint resolution.

(2) In making appointments to the commission, the governor shall strive to ensure that at least one (1) person appointed to serve on the commission is sixty (60) years of age or older and that at least one (1) person appointed to serve on the commission is a member of a racial minority.

(c) Two (2) members shall have a background in law enforcement and shall be appointed by the governor from a list of four (4) persons submitted by the director of the Tennessee bureau of investigation.

(d) If the governor determines that the persons recommended are not proper and suitable for membership on the commission, then the governor may decline to appoint such and shall call upon the director to submit another list of four (4) persons, and the governor may repeat such call until the director shall recommend some qualified person meeting the governor's approval.

(e) Two (2) members shall have a background in accounting and shall be appointed by the governor from a list of four (4) persons submitted by the state board of accountancy.

(f) No more than four (4) members shall be from the same grand division of the state.

(g) At least four (4) members shall have a reasonable knowledge of the practices and procedures of racing.

(h) The members of the commission shall serve staggered terms, accomplished by the following manner of initial appointments:

(A) Three (3) members shall serve a two-year term;

(B) Three (3) members shall serve a three-year term; and

(C) Three (3) members shall serve a four-year term.

All subsequent appointments shall be for four (4) years. A member shall be eligible to succeed himself.

(i) If a vacancy occurs, the governor shall make an appointment for the remainder of the unexpired term as the governor would make an original appointment. If a vacancy occurs while the general assembly is not in session among the nine (9) members appointed with the consent of the general assembly, the appointee shall serve only until the close of the next annual session unless the general assembly approves the joint resolution required by this section.

SECTION 9. To be eligible for appointment to and membership on the commission, a person shall:

(1) Have been a legal resident of this state for five (5) years immediately preceding the appointment, and shall be more than thirty (30) years of age;

(2) Be of such character and reputation as to promote public confidence in the administration of racing within this state;

(3) Not directly or indirectly or in any capacity own or have any interest in any racetrack where a race meeting may be held, including, but not limited to, an interest as owner, lessor, lessee, operator, manager, concessionaire, stockholder or employee;

(4) Not be a public official or public employee;

(5) Not have been convicted of any gambling or gaming offense under the federal law or the laws of this state or any other state or of an offense which is punishable as a felony under the federal law or the laws of this state or any other state;

(6) Not wager or cause a wager to be placed upon the outcome of any race at a race meeting which is under the jurisdiction and supervision of the commission;

(7) Not accept any pecuniary or other form of reward or gift from any association or any licensee of the commission; and

(8) Have no pecuniary interest or engage in any private employment in a business which does business with any association.

SECTION 10. (a) A member of the commission shall receive no compensation for the member's services, but a member shall receive the amount authorized by Section 7 of this act for expenses for each day or portion of a day the member is engaged in the official business of the commission.

(b) A member shall also receive reimbursement for travel expenses in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

SECTION 11. The members of the commission shall annually elect one (1) member to serve as chair of the commission.

SECTION 12. A majority of the members of the commission shall constitute a quorum for the transaction of business or the exercise of its powers.

SECTION 13. (a) The governor may remove any member of the commission for cause upon first giving the member a copy of the charges against such member and an opportunity for public hearing thereon.

(b) If such member is removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against the member and the governor's findings thereon, together with a complete report of the proceedings.

SECTION 14. (a) The commission shall appoint an executive secretary who shall serve at the pleasure of the commission. The executive secretary shall devote full time to the duties of the office and shall not hold any other office or employment.

(b) To be eligible for appointment as executive secretary, a person shall meet the qualifications required of a member of the commission under the terms of this chapter, except the qualifications concerning residency, and the executive secretary shall be subject to the same restrictions applying to members of the commission.

(c) The executive secretary shall receive an annual salary to be determined by the commission within such salary scales as established by state regulation, and shall be allowed actual and necessary expenses incurred in the performance of official duties.

(d) The executive secretary shall:

(1) Attend all meetings of the commission;

(2) Keep a complete record of the proceedings at each meeting of the commission;

(3) Preserve at the general office of the commission all books, documents and papers entrusted to the care of the commission, and prepare for service such books, documents and papers as may be required by the commission; and

(4) Serve as executive officer to the commission and be responsible for the carrying out of all rules, regulations, conditions, orders and directives of the commission.

SECTION 15. (a) Each member of the commission and the executive secretary shall furnish a corporate surety bond executed by a surety company authorized to do business in Tennessee, conditioned upon the faithful performance of the duties and the correct accounting of all sums received and coming into their control under this chapter.

(b) The bond shall be payable to the state in an amount of fifty thousand dollars (\$50,000).

SECTION 16. (a) The commission may employ, at reasonable compensation, assistant secretaries, stewards, supervisors of mutuels, veterinarians, inspectors, accountants, security



personnel, and other employees deemed by the commission to be essential at or in connection with any race meeting, and to the best interests of the racing commission, for the purpose of maintaining integrity and honesty in racing.

(b) The commission shall prescribe by rule the powers and duties of the persons employed under this section.

(c) In addition, the commission may appoint such deputies, officers and counsel as the commission may deem necessary and desirable.

SECTION 17. (a) All meetings of the commission shall be open and public in accordance with title 8, chapter 44. A public record of every vote and action taken by the commission shall be maintained at the commission's office.

(b) All records of the commission shall be open to inspection by the public during regular office hours, except the following:

(1) All records and information pertaining to the testing of humans for the presence of alcohol and/or drugs, including, but not limited to, medical information, the results of any urine or breathalyzer test, and any reports filed as a result of attending a supervisory treatment program, except for their use with respect to a hearing before the stewards, judges, commission or commission designee;

(2) Investigative records of the commission's security division; and

(3) Criminal history information, also known as "rap sheets," obtained by the commission from the federal bureau of investigation, Tennessee bureau of investigation, or any other law enforcement agency.

(c) The commission shall have access on a confidential basis to the information enumerated in subsection (b) as required to fulfill its lawful function.

SECTION 18. (a) The commission shall keep detailed records of all its meetings, business, collections and disbursements.

(b) The commission shall prepare annually a report of all such meetings, business, actions taken, collections, disbursements and recommendations it deems necessary and desirable following the termination of the racing season in this state. Such report shall be published in accordance with the rules, regulations, policies and procedures of the state publications committee.

(c) The commission shall also offer practical suggestions and recommendations as it deems proper and desirable to accomplish more fully the intent and policy of this chapter.

SECTION 19. All funds handled by the commission shall be subject to audit by the comptroller of the treasury under the authority granted by § 8-4-109.

SECTION 20. Except as provided in § 4-36-306, all moneys received by the commission pursuant to this chapter shall be paid into the state general fund.

SECTION 21. Except as provided herein, the commission's rule-making procedure and practice shall be governed by the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

SECTION 22. The commission, as an agency of the state, shall prepare its annual budget in accordance with title 9, chapter 6.

SECTION 23. (a) The commission may:

(1) Issue subpoenas and summon witnesses before its meetings and hearings, administer oaths to such witnesses, and require testimony on any issue before it;

(2) Compel the production of all books, records or documents showing the receipts and disbursements of any person licensed to conduct the race meetings under this chapter, as well as other such records which the commission believes to be pertinent to its function of maintaining the integrity of racing in this state;

(3) At any time compel the removal of any employee or official employed by any association in any case where it has reason to believe that the employee or official has been guilty of any dishonest practice in connection with racing, has failed to comply with

any condition of the association's license, or has violated any rule adopted by the commission;

(4) Require that the books, records and financial statement of any association under this chapter be kept in a manner prescribed by the commission;

(5) Visit, investigate and place auditors, inspectors and security personnel in the offices, tracks or places of business of any association; and

(6) Impose a civil penalty for each violation of a statute or rule of not more than ten thousand dollars (\$10,000).

(b) If a person refuses to attend to give testimony or to produce books, records or documents, pursuant to a subpoena issued by the commission, the chancery court of the county where attendance is required, upon application of the commission, shall compel obedience to the subpoena and shall punish refusal to obey or to testify in the same manner as is punished a refusal to obey a subpoena or to testify pursuant to a subpoena issued from the chancery court.

SECTION 24. (a) Any party who is the subject of any order or ruling of the stewards or judges may appeal to the commission with respect to such stewards' and judges' order or ruling other than as to the extent of disqualification for a foul in a race or as to a finding of fact concerning an incident occurring during the running of a race.

(b) (1) Disciplinary hearings conducted by the stewards or judges and appeals therefrom shall comply with rules of procedure promulgated by the commission and shall not be subject to the provisions of the Uniform Administrative Procedures Act, compiled in chapter 5 of this title.

(2) An appeal in the case of any person penalized or disciplined by the stewards or judges may be made to the commission. An appeal shall be:

(A) Filed in writing at the office of the commission within five (5) days of the date of such penalty or discipline; and

(B) Signed by the person making it and must set forth the person's reasons therefor.

(c) An appeal from the decision of the stewards or judges to the commission shall not affect that decision until the appeal has been sustained or dismissed or a stay order issued.

(d) (1) An appeal hearing may be conducted by the commission, or may be conducted by a hearing officer appointed by the commission to serve in its place. The hearing officer may be the commission's executive secretary or other staff member, an administrative judge from the administrative procedures division of the department of state, or any other qualified person. A hearing officer may be a state employee, serve by contract, or be paid on a per diem basis at the discretion of the commission.

(2) The commission or its hearing officer, upon receipt of a written appeal, shall promptly grant a hearing and render a decision within a meaningful time. Any continuance of a hearing must be reasonable in duration and for just cause.

(3) The hearing officer may, in receiving evidence on behalf of the commission, make such rulings affecting the competency, relevancy and materiality of evidence to be presented and rule upon any motions presented. The commission may require the entire record to be certified to it for decision, and the hearing officer shall submit written findings of fact, conclusions of law and recommendations which shall be incorporated in and become a part of the record. In the absence of a requirement by the commission that a record be certified to it for decision, the hearing officer shall render an initial decision, and in the absence of either an appeal to the commission or a review upon motion of the commission, the hearing officer's initial decision shall become the decision of the commission.

(4) The commission is duly authorized to promulgate rules setting forth further procedures for appeals filed pursuant to this section.

SECTION 25. This act shall take effect July 1, 1998, the public welfare requiring it.